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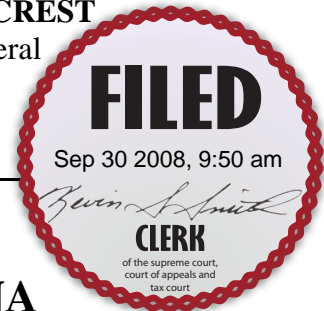
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**IN THE  
COURT OF APPEALS OF INDIANA**

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STEVE DELP,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0803-CR-210

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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Robert Altice, Judge  
Cause No. 49G02-0706-FA-102562

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**September 30, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

In this appeal, Steve Delp challenges the sufficiency of evidence to sustain his convictions for class A felony child molesting and class C felony child molesting. We affirm.

Delp became acquainted with eleven-year-old T.F. and her fourteen-year-old sister, A.S., when he was hired to perform maintenance work on their rental property. One evening in the late winter or early spring of 2007, Delp hired A.S. to babysit his children. T.F. accompanied her sister to the babysitting job at Delp's house. That evening, when Delp returned from work, he and an adult woman named Cassey played cards with T.F. and A.S., and Delp served the children mixed alcoholic beverages. Delp asked T.F. to play a game in which she would pretend she was dead by lying still on a bed in his children's bedroom. With the lights off and his children asleep, Delp entered the bedroom and began kissing T.F. and rubbing her vagina on top of her clothing for approximately one minute. He then removed her pants and underwear and left the room, assuming she was asleep. T.F. got up, went behind the door, and began putting her pants back on when A.S. and Cassey entered the room. She told them what had happened, and they all returned to the kitchen.

Later that night, in a dark bathroom, Delp pushed T.F. to the ground and forced her to perform oral sex on him. He held his hands against the back of her head, and she struggled to get away. After about three minutes, Delp finally released her, and she returned to the kitchen.

Approximately one to two weeks later, T.F. and A.S. told their mother about the incidents. Two days later, the girls' mother reported the incidents to Child Protective Services. On June 6, 2007, the State charged Delp with one count of class A felony child

molesting for the oral sex incident in the bathroom and one count of class C felony child molesting for the fondling incident in the bedroom. On February 5, 2008, a jury found Delp guilty as charged.

On appeal, Delp contends that the evidence is insufficient to sustain his convictions. When reviewing a challenge to the sufficiency of evidence, we neither reweigh evidence nor judge witness credibility. *Book v. State*, 880 N.E.2d 1240, 1252 (Ind. Ct. App. 2008), *trans. denied*. Rather, we consider only the probative evidence and reasonable inferences most favorable to the verdict. *Id.* “[W]e will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty.” *Id.* “A victim’s testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction for child molesting.” *Sargent v. State*, 875 N.E.2d 762, 767 (Ind. Ct. App. 2007).

Delp claims insufficiency of evidence on the grounds that T.F.’s testimony was incredibly dubious. Appellate courts may apply the “incredible dubiousity” rule to impinge upon a jury’s function to judge a witness’s credibility. *Fajardo v. State*, 859 N.E.2d 1201, 1208 (Ind. 2007), *superceded by statute on other grounds*.

If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.

*Id.* (citations omitted).

In *Fajardo*, our supreme court upheld a child molesting conviction in the face of an

incredible dubiousity challenge to the eleven-year-old victim's testimony. There, the defendant alleged that the child used equivocal phrases more than ninety times and that she was uncertain regarding the date of the offense, the whereabouts of family members, and some of the touching. He further claimed that her answers were evasive and that her testimony was uncorroborated.

Here, Delp asserts that T.F.'s testimony was incredibly dubious because it was inconsistent with her sister's and her mother's testimony regarding (1) how they got to Delp's house; (2) how long they remained there; (3) the contents and quantity of the alcoholic beverages they drank; (4) when they reported the incidents to their mother; and (5) which daughter actually told the mother what had happened. First, we note that the incredible dubiousity rule applies where a sole witness provides internally inconsistent or improbable testimony. *Id.* Here, T.F. was not the sole witness, and most of the alleged inconsistencies were between the various witnesses' testimony and therefore not within the parameters of the incredible dubiousity rule. *Ferrell v. State*, 746 N.E.2d 48, 50 (Ind. 2001). Moreover, none of the alleged inconsistencies in T.F.'s testimony pertained to an element of the offense. Thus, these matters pertained to the weight of the evidence and therefore were within the purview of the trier of fact. To the extent that Delp raises the issue of a lack of medical evidence, we note that the nature of the offenses as charged would not necessarily produce medical evidence. Again, this is a factual issue for the jury.

In sum, Delp's argument is essentially an invitation to reweigh evidence and judge witness credibility, which we may not do. Therefore, we affirm Delp's child molesting convictions.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.